

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

TRUSTEES OF THE OPERATING ENGINEERS'  
LOCAL 324 PENSION FUND, OPERATING  
ENGINEERS' LOCAL 324 HEALTH  
CARE PLAN, OPERATING ENGINEERS' LOCAL  
324 VACATION & HOLIDAY FUND, OPERATING  
ENGINEERS' LOCAL 324 RETIREE BENEFIT FUND,  
OPERATING ENGINEERS' LOCAL 324 APPRENTICESHIP  
FUND, and OPERATING ENGINEERS' LOCAL 324  
DEFINED CONTRIBUTION PLAN,  
Trust Funds Established and Administered  
Pursuant to Federal Law,

Plaintiffs,

v.

Case No. 14-cv-12047  
Hon. John Corbett O'Meara

AMERICAN EXCAVATING  
CONTRACTORS, LLC, a Michigan  
limited liability company, and  
MANUEL RODGERS, Individually,

Defendants,

And

TRUSTEES OF THE OPERATING ENGINEERS'  
LOCAL 324 PENSION FUND, OPERATING  
ENGINEERS' LOCAL 324 HEALTH  
CARE PLAN, OPERATING ENGINEERS' LOCAL  
324 VACATION & HOLIDAY FUND, OPERATING  
ENGINEERS' LOCAL 324 RETIREE BENEFIT FUND,  
OPERATING ENGINEERS' LOCAL 324 APPRENTICESHIP  
FUND, and OPERATING ENGINEERS' LOCAL 324  
DEFINED CONTRIBUTION PLAN,  
Trust Funds Established and Administered  
Pursuant to Federal Law,

Plaintiffs,

v.

AMERICAN ENVIRONMENTAL CONSULTANTS, LLC  
Garnishee Defendant.

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**PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT JUDGMENT**  
**AGAINST GARNISHEE DEFENDANT AMERICAN ENVIRONMENTAL**  
**CONSULTANTS, LLC**

NOW COME the Plaintiffs, by and through their attorneys, Sullivan, Ward, Asher & Patton, P.C., and move for an Entry of Default and Default Judgment against Garnishee Defendant, American Environmental Consultants, LLC, pursuant to Fed. R. Civ. P. 64 and Michigan Court Rule 3.101, as follows:

1. Plaintiffs obtained an Amended Order of Judgment on January 12, 2015 against Defendant American Excavating Contractors, LLC and Manuel Rodgers in the amount of \$85,156.08. (Doc. No. 25).

2. On February 27, 2015, this Court entered a Request and Writ of Garnishment by Plaintiffs against American Environmental Consultants, LLC (Doc. No. 42).

3. On March 3, 2015, Plaintiffs served the Periodic Writ of Garnishment, Garnishee Disclosure Form, and a \$6.00 disclosure fee check on American Environmental Consultants, LLC. *See* Letter and Return of Service, attached as **Exhibit A**.

4. As of the date of this Motion, Plaintiffs have received no response from American Environmental Consultants, LLC.

5. Having received no response from American Environmental Consultants, LLC, and pursuant to MCR 3.101(S), Plaintiffs seeks an order entering a default and default judgment against American Environmental Consultants, LLC in the amount of American Environmental Consultants, LLC's liability as provided in MCR 3.101(G)(2).

6. Pursuant to MCR 3.101(S)(3), Plaintiffs request that this Honorable Court impose Costs including reasonable attorney fees on American Environmental Consultants, LLC as a result of its failure to comply with the Writ of Garnishment.

WHEREFORE, Plaintiffs respectfully requests that this Honorable Court grant their Motion and order the following:

A. Enter a default and default judgment against Garnishee Defendant American Environmental Consultants, LLC in the amount of American Environmental Consultants, LLC's liability as provided in MCR 3.101(G)(2);

B. Enter an Order finding Garnishee Defendant American Environmental Consultants, LLC to be in contempt of court for failing to respond to the Writ of Garnishment pursuant to MCR 3.101(S)(2); and

C. Enter an Order requiring Garnishee Defendant American Environmental Consultants, LLC to pay costs, including reasonable attorney fees, to Plaintiffs, necessitated by the filing of this motion.

Respectfully submitted,

**SULLIVAN, WARD,  
ASHER & PATTON, P.C.**

By: /s/ Blaine A. Veldhuis  
Blaine A. Veldhuis (P78840)  
Sullivan, Ward, Asher & Patton, P.C.  
Attorney for Plaintiffs  
1000 Maccabees Center  
25800 Northwestern Highway  
Southfield, MI 48075-8412  
(248) 746-0700

Dated: April 30, 2015

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR ENTRY OF  
DEFAULT JUDGMENT AGAINST GARNISHEE DEFENDANT  
AMERICAN ENVIRONMENTAL CONSULTANTS, LLC**

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**STATEMENT OF ISSUE PRESENTED**

SHOULD A DEFAULT AND DEFAULT JUDGMENT BE ENTERED AGAINST GARNISHEE DEFENDANT AMERICAN ENVIRONMENTAL CONSULTANTS, LLC FOR ITS FAILURE TO RESPOND TO PLAINTIFFS' WRIT OF GARNISHMENT?

Plaintiffs say - Yes

Court should say - Yes

## **INTRODUCTION**

Plaintiffs request entry of a Default and a Default Judgment against Garnishee Defendant American Environmental Consultants, LLC ("American Environmental") because American Environmental failed to respond to the Writ of Garnishment from Plaintiffs.

## **STATEMENT OF FACTS**

Plaintiffs incorporate and rely on the factual recitation found within the attached *Motion for Entry of a Default and a Default Judgment against Garnishee Defendant American Environmental Consultants, LLC*.

## **LEGAL ARGUMENT**

### **A. General Requirements for Garnishment Proceedings**

Garnishments procedures, pursuant to Fed. R. Civ. P. 64 and 69, are governed by state law. Thereby, MCR 3.101 provides the appropriate procedure. MCR 3.101(h) requires a garnishee to serve a verified disclosure within 14 days after being served with the Writ of Garnishment.

This Court has explained,

The purpose of a garnishment proceeding is to allow a judgment creditor to satisfy her judgment from money, credits, or other property belonging to the judgment debtor that is in the hands of someone else. A garnishment proceeding, therefore, "is effectively a proceeding by the judgment debtor in the name of the judgment creditor against



the garnishee." Such proceedings are recognized under Michigan law.  
(*internal citations omitted*)

*Pucci v. Somer*, 962 F. Supp. 2d 931, 935 (E.D. Mich. 2013).

**B. Sanctions Available Against a Garnishee**

Michigan Court Rules provide for sanctions against a garnishee that fails to disclose or do other acts. MCR 3.101(s) provides as follows:

1. If the garnishee fails to disclosure or do a required act within the time limit imposed, a default may be taken as in other civil actions. A default judgment against a garnishee may not exceed the amount of the garnishee's liability as provided in subrule (g)(2).
2. If the garnishee fails to comply with the court order, the garnishee may be adjudged in contempt of court.
3. In addition to other actions permitted by law or these rules, the court may impose costs on a garnishee whose default or contempt results in expense to other parties. Costs imposed shall include reasonable attorney fees and shall not be less than \$100.00.

Other provisions of the Michigan Court Rules provide for taking a default. MCR 2.313(d)(1)(b), in conjunction with 2.313(b)(2)(c), allow for entry of a default judgment for the failure to provide written Interrogatories and Discovery Requests.

**C. Application of Law**

This Court entered a Writ of Garnishment by Plaintiffs against Garnishee American Environmental on February 27, 2015. (Doc. No. 42). Plaintiffs served

the Writ of Garnishment and associated documents on American Environmental Consultants, LLC on March 3, 2015.

To date, American Environmental has never responded to the Writ of Garnishment. Plaintiffs have not received a verified disclosure. In fact, Plaintiffs have not received any correspondence from American Environmental regarding the Writ of Garnishment.

Since American Environmental has failed to respond to the Writ of Garnishment, Plaintiffs request that this Honorable Court enter a default and default judgment against American Environmental.

Further, Plaintiffs request that this Honorable Court hold Garnishee Defendant in Contempt of Court for failing to respond to the Writ of Garnishment.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant their Motion and order the following:

A. Enter a default and default judgment against Garnishee Defendant American Environmental Consultants, LLC in the amount of American Environmental Consultants, LLC's liability as provided in MCR 3.101(G)(2).

B. Enter an Order finding Garnishee Defendant American Environmental Consultants, LLC to be in contempt of court for failing to respond to the Writ of Garnishment pursuant to MCR 3.101(S)(2);

C. Enter an Order requiring Garnishee Defendant American Environmental Consultants, LLC to pay costs, including reasonable attorney fees, to Plaintiffs necessitated by the filing of this motion.

Respectfully submitted,

**SULLIVAN, WARD,  
ASHER & PATTON, P.C.**

*By: /s/ Blaine A. Veldhuis*  
Blaine A. Veldhuis (P78840)  
Sullivan, Ward, Asher & Patton, P.C.  
Attorney for Plaintiffs  
1000 Maccabees Center  
25800 Northwestern Highway  
Southfield, MI 48075-8412  
(248) 746-0700

Dated: April 30, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on April 30, 2015, my assistant, Bonnie Rogers, electronically filed the foregoing document with the Clerk of the Court using the ECF system, and notice was given to the following non-ECF participants by FIRST CLASS mail:

Manuel Rodgers  
12838 Gavel  
Detroit, MI 48227

American Excavating Contractors, LLC  
12838 Gavel  
Detroit, MI 48227

American Environmental Consultants, LLC  
12838 Gavel  
Detroit, MI 48227

/s/ Blaine A. Veldhuis  
Blaine A. Veldhuis (P78840)  
Sullivan, Ward, Asher & Patton, P.C.  
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Dated: April 30, 2015

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